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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 IMPLICIT NETWORKS, INC.,

No. C 09-1478 SI

10 Plaintiff,

**ORDER GRANTING PLAINTIFF'S
REQUEST TO COMPEL PRODUCTION
OF DOCUMENTS**

11 v.

12 MICROSOFT CORPORATION, *et al.*

13 Defendants.
14 _____/

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17 Plaintiff requests a discovery order compelling defendants to produce documents requested
18 under Patent Local Rule 3-4(a).¹

19 It appears that plaintiff did not attempt to meet and confer with defendants prior to filing this
20 request. Civil Local Rule 37-1 provides, "The Court will not entertain a request or a motion to resolve
21 a disclosure or discovery dispute unless, pursuant to [Federal Rule of Civil Procedure] 37, counsel have
22 previously conferred for the purpose of attempting to resolve all disputed issues." Although plaintiff's
23 noncompliance with the meet and confer rule provides sufficient cause to deny this discovery request,
24 the Court will address the issue before it in the interest of efficiency.
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26 _____
27 ¹ The parties' letter briefs are found at Docket Nos. 37 (filed 11/12/09), 38 (filed 11/18/09), and
28 40 (filed 11/20/09). The Court notes that the parties are to exchange responsive claim constructions on
December 1, 2009 and to file a joint claim construction and pre-hearing statement on January 11, 2010.

1 **1. Request for Rule 3-4(a) documents concerning ASP.NET functioning**

2 This request seeks documents demonstrating the specific functioning of defendant Microsoft's
3 ASP.NET software including: (1) Internal Product Requirement documents ("PRDs") used by
4 Microsoft's engineering team in creating ASP.NET and (2) engineering specifications for ASP.NET,
5 "which would include [Uniform Modeling Language ("UML")] diagrams and related
6 document/specifications that detail the inner workings of ASP.NET and its integration points with other
7 Microsoft Products." Plaintiff asserts that it is entitled to obtain these documents under Patent Local
8 Rule 3-4(a), which requires that "the party opposing a claim of patent infringement shall produce or
9 make available for inspection and copying: (a) Source code, specifications, schematics, flow charts,
10 artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements
11 of an Accused Instrumentality."

12 In response to plaintiff's letter brief, defendants contend that the documents sought by plaintiff
13 have already been produced, including over 10,000 pages of technical documents sufficient to show the
14 operation of the accused ASP.NET software, specifications for version 1.0 of the software, and
15 ASP.NET source code. The source code has been made available for plaintiff's experts to review, but
16 only as of November 16, 2009, after plaintiff's 11/12/09 letter brief was filed. Plaintiff contends that
17 defendants produced only an incomplete set of the version 1.0 specifications.

18 The Court agrees that defendants should produce Rule 3-4(a) documents concerning the
19 allegedly infringing aspects of their device. To the extent they have not done so already, defendants
20 are therefore ordered to produce documents that show the relevant allegedly infringing aspects of the
21 ASP.NET software.

22 The Court directs the parties to further meet and confer regarding defendants' production, to
23 determine whether it is complete, no later than by **December 1, 2009**. Further, the parties are ordered
24 to meet and confer on the balance of the discovery requests, to the extent they remain in dispute.

25
26 **CONCLUSION**

27 Where the Court has ordered the parties to further meet and confer, the parties shall do so
28 immediately but by no later than **December 1, 2009**, and if the parties are able to resolve their disputes,

1 defendants shall produce documents by **December 4, 2009**. If the parties are not able to resolve their
2 disputes after the further meet and confer, plaintiff may file another motion to compel.

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4 **IT IS SO ORDERED.**

5 Dated: November 23, 2009



SUSAN ILLSTON
United States District Judge